

# Consumer Financial Services Committee

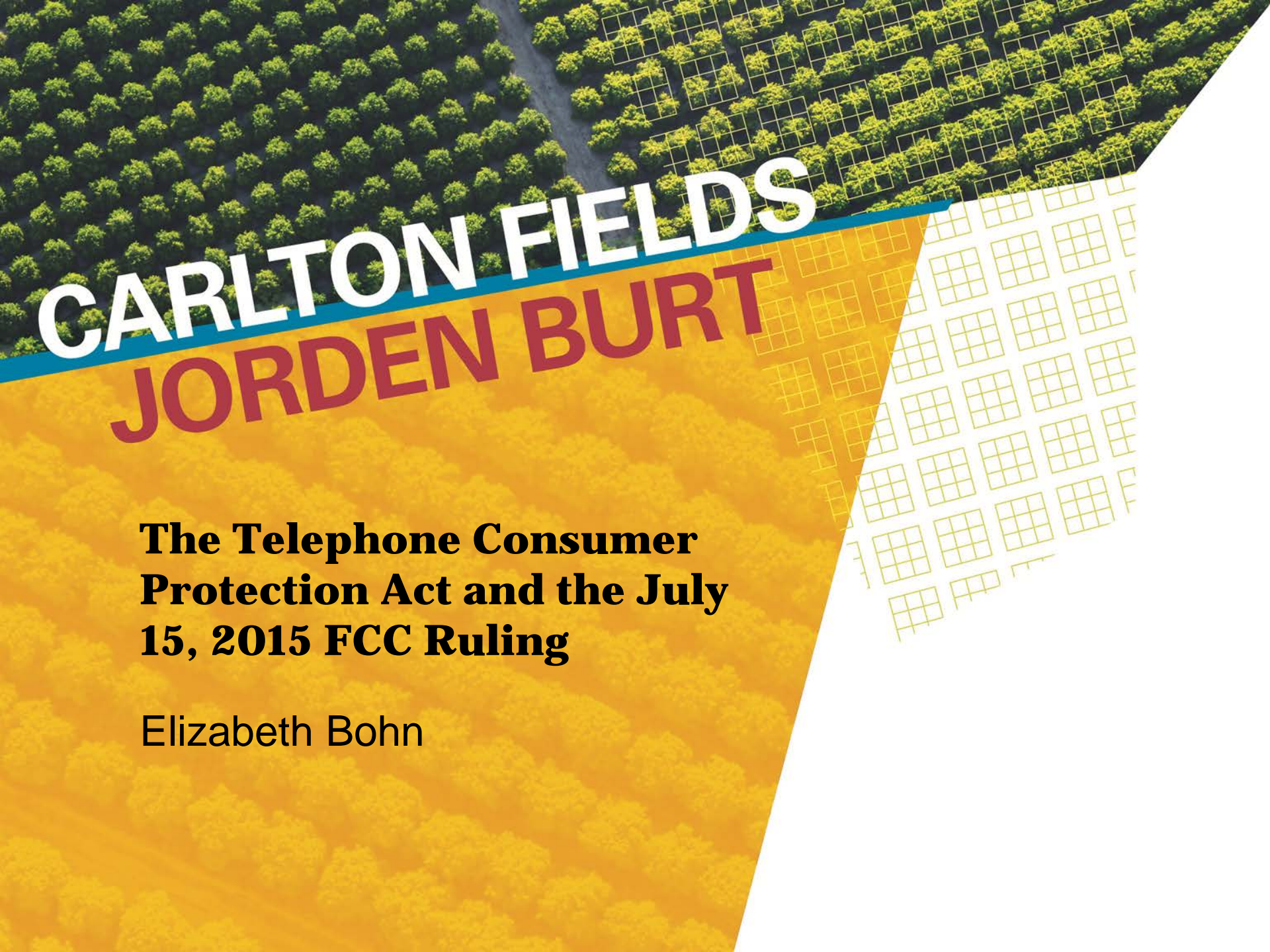
**Monthly Call-In Program**

**November 4, 2015**

**TCPA Update**

# Presenters

- Elizabeth Bohn, Carlton Fields  
Jordan Burt
- Scott Owens, Scott D. Owens, P.A.
- Kate Larson, Consumer Bankers  
Association



# CARLTON FIELDS

## JORDEN BURT

**The Telephone Consumer  
Protection Act and the July  
15, 2015 FCC Ruling**

Elizabeth Bohn

# Telephone Consumer Protection Act (TCPA) 47 U.S.C. §227

- Authorizes Federal Communications Commission ("FCC") to issue rules and interpretations.  
§227(b)(2)
- TCPA and FCC regulations prohibit:
  - “making” any “call” using automated telephone dialing equipment (ATDS) or prerecorded voice messages (PVM) to persons in U.S. at numbers assigned to pagers or wireless phones absent prior express consent from the called party §227(b)(1)(A)
  - “initiating” any [non-emergency] telephone call to any residential telephone line” using PVM or ATDS absent prior express consent from called party, unless exempted by FCC reg., e.g, calls made for commercial purpose §227(b)(1)(B)

# TCPA Prohibitions

- Making *telemarketing* calls to residence lines using ATDS or PVM absent prior *written* consent (FCC Ruling 12-21 effective October, 2013)
- “[using] any telephone facsimile machine, computer, or other device *to send*, to a telephone facsimile machine”, an unsolicited advertisement”, absent both an established business relationship with the recipient, and inclusion of clear and conspicuous notice of opt out rights and requirements on first page. §227(b)(1)(C)
- Calls to parties on the National Do Not Call Registry established by FCC 2003, pursuant to §227(c)(3).

# Penalties for TCPA violations

- Private right of action § 227(b)(3)
- Injunctive relief
- Statutory damages: \$500 for non-willful violations, up to \$1500 for willful or knowing violations, per violation
- decisions split on "willful or knowing" as knowing violation of law vs. mere intent to place call
- class actions frequent and increasing

# Vicarious vs. Direct Liability

- FCC 2013 *Dish Network* Ruling. FCC 13-54. Telemarketing calls
  - liability of seller for calls by 3rd party telemarketers
  - no *direct* liability unless seller physically places call
  - seller may be held vicariously liable for violations by third parties under federal common law agency principles including control, apparent authority, and or ratification. *Taco Bell* (9<sup>th</sup> Cir), no agency, no liability for marketing text messages.
  - *Sarris* (11<sup>th</sup> Cir. 2015 ), liability for unsolicited *faxed advertisements* sent on behalf of Defendant; *Dish Network* inapplicable to faxed advertisements; *Bais* (D.Minn,2015) *Darden* (N.D. Ill. 2015)
  - Distinction re “make call” vs “send” fax

# FCC July 2015 Ruling 15-72

- 21 petitions for clarification
  - definition of "autodialer"
  - text messages as calls
  - internet to phone texting equipment
  - establishment/revocation of consent
  - definition of "called party," in context of Reaching reassigned or wrong numbers
  - "robocall"- blocking technology
  - limited exemptions for exigent circumstances
  - no petitions addressing faxed advertisements

# **FCC July 2015 Ruling 15-72**

## **Definition of Autodialer and Call**

- Petition sought clarification that “capacity,” used in TCPA definition of “automatic telephone dialing system”:
  - “equipment which has the capacity—
    - (A) to store or produce telephone numbers to be called,
    - using a random or sequential number generator; and
    - (B) to dial such numbers.” 227(a)(1);

FCC Reg 47 CFR § 64.1200(f)

meant “present” or “current” capacity

# **FCC July 2015 Ruling 15-72**

## **Definition of Autodialer and Call**

- term "call" in prohibition on ATDS/PVM calls to wireless phones includes text messages:
  - "by addressing a message using the consumer's wireless telephone number (e.g., 5555551111@sprint.messaging.net or entering a message on a web portal to be sent to a consumer's wireless telephone number) and sending a text message to the consumer's wireless telephone number, the equipment dials a telephone number and the user of such technology thereby makes a telephone call to a number assigned to a wireless service as contemplated in section 227(b)(1) of the Act." (para 114)
  - "consumer consent is required for text messages sent from text messaging apps that enable entities to send text messages to all or substantially all text-capable U.S. telephone numbers, including through the use of autodialer applications downloaded or otherwise installed on mobile phones" (para 116).

# FCC July 2015 Ruling 15-72

## Definition of Autodialer

- Current vs "potential" capacity
- relies on FCC 2008 ruling (07-232) that "predictive dialers" fall within definition of ATDS in support:
  - "equipment that dials numbers and, when certain computer software is attached, also assists telemarketers in predicting when a sales agent will be available to take calls. The hardware, when paired with certain software, has the capacity to store or produce numbers and dial those numbers at random, in sequential order, or from a database of numbers"... "principal feature of predictive dialing software is a timing function, not number storage or generation" (July 2015 ruling, para. 16, 24)

# FCC July 2015 Ruling 15-72

## Definition of Autodialer

- Stresses "capacity to dial numbers without human intervention," from ruling that "predictive dialer" is auto dialer"
- "capacity" includes "*potential ability*," for example, by adding software to perform functions in definition
- "capacity" does not include "theoretical potential."
- no specifications for "autodialer"
- no definition to measure "theoretical potential" vs. "future ability".

# FCC July 2015 Ruling 15-72

## Prior Express Consent

- Reiterates FCC 2008 ruling 07-232.
  - Calls using ATDS or PVM to wireless numbers provided to creditor in connection with existing debt permissible as made with the "prior express consent"
- Reiterates FCC 2012 ruling 12-21
  - prior express consent can be given orally or in writing
- Reiterates FCC 2014 *Group Me* ruling 14-3.
  - prior express consent may be provided through intermediary

# **FCC July 2015 Ruling 15-72**

## **Revocation of Prior Express Consent**

- prior express consent revocable
  - "at any time and through any reasonable means"
  - callers "may not limit manner in which revocation may occur"
  - no standards as to "reasonableness"
  - Porting a wireless number to a landline does not revoke prior express consent.

# Reassigned Numbers, Clarification of "Called Party"

- number reassignment, calls failing to reach intended recipient due to good faith error
- "called party" means current subscriber or customary user (example, family plans); where subscriber transfers primary use of the telephone to another, the primary user may be subscriber's agent, thereby permitting the primary user to consent (para 75).
- rejects "intended recipient" as "called party," adopting *Soppet v. Enhanced Recovery Co.*, (7th Cir. 2012)
- safe harbor for one call after reassignment of number "to gain actual or constructive knowledge of" reassignment

# Wrong Number Calls

- Wrong numbers due to incorrect input/dialing:

"While the Parties raise the [intended recipient ] issue in the context of calls to reassigned wireless numbers, we include in the discussion of the definition of "called party" robocalls to "wrong numbers," by which we mean numbers that are misdialed or entered incorrectly into a dialing system, or that for any other reasons result in the caller making a call to a number where the called party is different from the party the caller intended to reach or the party who gave consent to be called" (footnote 256, para 72)

# Call Blocking Technology

- Grants NAAG petition confirming no legal prohibitions to offering call blocking technology:  
"we affirm that nothing in the Communications Act or our rules or orders prohibits carriers or VoIP providers from implementing call-blocking technology that can help consumers who choose to use such technology to stop unwanted robocalls. Consumers currently have the choice to use call-blocking technology to block individual numbers or categories of numbers, and may continue to do so... in the interests of public safety, we strongly encourage carriers, VoIP providers, and independent call-blocking service providers to avoid blocking autodialed or prerecorded calls from public safety entities ..." (para 152)

# Limited Exemptions From Consent for Certain Free to End User Pro-Consumer calls.

## ■ Financial Messages

- Grants American Bankers' Association petition exempting certain calls from prior express consent:
  - potential fraudulent activity or identity theft
  - possible breaches of consumer's personal information
  - measures to remedy data breach harm
  - relating to money transfers
  - maximum 3 calls over 3 days
  - opt out mechanism be provided and no charge to consumer.

# **Limited Exemptions From Consent for Certain Free to End User Pro-Consumer calls.**

- **Limited Exemptions From Consent for  
Certain Free to End User Pro-Consumer  
calls.**
  - Health Care Related Messages
    - provision of a phone number to health care provider equals prior express consent for healthcare calls subject to HIPAA by HIPAA covered entities
    - Non-marketing healthcare calls such as appointments, reminders, pre-registration, discharge follow up, prescription information
    - no exemption for calls regarding patient accounts, billing

# Post FCC Ruling Decisions of Interest

- “human intervention” may remove equipment from definition of “autodialer.” *Luna v. Shac, LLC, McKenna v. WhisperText*, (N.D. Cal.)
- Stay granted pending legal challenges to FCC ruling. *Gensel v. Performant Technologies* (E.D. Wisc). Stay denied. *Hooker v. Sirius XM Radio* (E.D.Va), *Backer v Costco Wholesale* (W.D. Mo)
- SJ granted, good faith defense based on prior subscriber consent. *Danehey v. Time Warner* ( E.D N.C.)
- regular phone user who was not intended recipient of marketing call to residential phone line had standing to sue as "called party" *Leyse v. Bank of America*. (3rd Cir.)

# The TCPA from the Plaintiff's Attorney's Perspective



# The TCPA was never intended to apply solely to telemarketers

- Since its inception, Congress and the FCC has made clear it applies to virtually anyone using ATDS technology – i.e., banks, market research companies, debt collector, surveys, political robocalls, scam artists, etc.
- Why do these make favorable cases for Plaintiff's attorneys?
- The defendant is typically detested by the jury (and often the Judge); Remember: no one likes automated calls or text message spam.
- *Berg v. Merchants Assoc. Collection Div., Inc.*, 586 F.Supp.2d 1336, 1344 (S.D. Fla. 2008) (calling automated telephone messages an “inherently risky method of communication” and noting that debt collectors use such a mode of communication at their peril).



- ♦ The Plaintiff nearly always has the upper-hand if the case goes to a jury because robocalls are so universally despised and everyone can relate to the problem.

- ♦ **“Bin Ladin most hated in America, Telemarketers drop to #2.”**

-Jay Leno

(The Tonight Show: Oct. 29, 2001)

# Many Judge / juries are inclined to award maximum damages of **\$1,500** dollars

- ◆ *Harris v. World Financial Network Nat. Bank*, 867 F. Supp. 2d 888 (E.D. Mich. 2012)
- ◆ *Cunningham v. Addiction Intervention*, No. 3: 14-0770 (M.D. Tenn. Feb. 4, 2015)
- ◆ *Moore v. Dish Network LLC*, 57 F. Supp. 3d 639 (N.D.W. Va. 2014)
- ◆ *Roylance v. ALG Real Estate Service, Inc.*, No. 14-cv-02445-BLF (N.D. Cal. Apr. 3, 2015)

# Despite rhetoric from the defense bar, there are relatively few TCPA cases being filed in the courts.....

- ◆ According to U.S. Senator Claire McCaskill, the FCC receives more than 200,000 complaints per month.
- ◆ By comparison, in 2013, only 1,451 cases were filed in federal court alleging violations of the TCPA.
- ◆ This equates to less than 1% percent (when compared to those who have actually gone so far as to contact the FCC).
- ◆ More realistically, 1/1,000,000<sup>th</sup> of 1% of illegal calls actually result in a federal lawsuit.

# FCC Releases Data on Robocall Complaints

- ◆ The FCC has recently released a spreadsheet detailing pending complaints filed by consumers, which is available at:

<https://consumercomplaints.fcc.gov/hc/en-us/articles/205239443-Data-on-Unwanted-Calls>

- ◆ Americans received **4.5 billion** spam text messages in 2011, more than twice as many compared to 2009.
- ◆ Source: Nicole Perlroth, *Spam Invades a Last Refuge, the Cellphone*, New York Times (published: April 7, 2012)

<http://www.nytimes.com/2012/04/08/technology/text-message-spam-difficult-to-stop-is-a-growing-menace.html>

# ADDITIONAL FACTS ABOUT ROBOCALLS

- ◆ **The Pew Research Center reports that 79% percent of cellular telephone owners use text messaging; of this group, 69% percent receive unwanted text message spam, 25% percent on a weekly basis.**
- ◆ **Government figures show monthly robocall complaints have climbed from about 65,000 in October 2010 to more than 212,000 this April. More general complaints from people asking a telemarketer to stop calling them also rose during that period, from about 71,000 to 182,000.**

<http://www.foxnews.com/tech/2012/09/17/complaints-about-automated-sales-calls-up-sharply/>

# Spam Can Cause Real Damage



**X**



**1.5**  
**BILLION**

**=**



**\$300 MILLION**

**MOBILE USERS CAN PAY  
UP TO \$0.20 PER SMS**

**AND RECEIVE 1.5 BILLION  
SPAM TEXT EVERY YEAR**

**RESULTING IN \$300 MILLION  
LOST TO TEXT MESSAGE SPAM**

# Recent high-dollar TCPA settlements still do not appear to be curbing the abuses from the financial services industry:

- ◆ *In Re: Capital One TCPA Litigation*, No. 1:12-cv-10064 (N.D. Ill.)  
**\$75.5 million**
- ◆ *Wilkins v. HSBC Bank Nevada, N.A.*, No. 14-cv-00190 (N.D. Ill.)  
**\$40 million**
- ◆ *Rose v. Bank of America*, No. 11-cv-2390 (N.D. Cal.)  
**\$32 million**
- ◆ *Allen v. JP Morgan Chase*, No. 13-cv8285 (N.D. Ill.)  
**\$10.2 million**
- ◆ *Picchi v. World Fin. Network Bank*, No. 0:11-cv-61797 (S.D. Fla.)  
**\$5 million**
- ◆ *Cooper v. Nelnet, Inc.*, No. 14-cv-00314 (M.D. Fla.)  
**\$4.5 million**

# TCPA Timeline

- ♦ July 10, 2015 - New FCC rules regarding the interpretation and implementation of the TCPA became effective(FCC 15-72). Telemarketers who will be most affected by the new FCC rule include those using dialing systems that don't have the "current capacity" to autodial, but which would have the "potential capacity" to do so. FCC rules impact issues such as calling reassigned numbers, who "called party" refers to, consumer revocation of consent, and issues relating to call blocking technology. New FCC rules have expanded the definition of an ATDS. Exceptions to the new FCC rules are very limited.
- ♦ October 16, 2013: Provisions requiring prior express written consent to autodial cell phones or to transmit recorded messages to cell phones or landlines, phasing out the established business relationship (EBR) exemption to the prohibition on robocalls to residential lines.

# More on TCPA Timeline

- ◆ January 14, 2013: Provisions regarding the new required automated, interactive opt-out mechanism (IVR or key-press) for prerecorded messages and abandoned calls.
- ◆ November 15, 2012: Provisions regarding the calculation of an autodialer's abandonment rate (now measured on a per campaign, successive 30-day measurement period).
- ◆ September 22, 2011 – H.R. 3035 Mobile Informational Call Act of 2011: introduced 9/22/2011, died in committee 11/4/2011.
- ◆ October 27, 2010 – Telemarketing Sales Rule amendment (addressed deceptive and abusive practices in debt relief services)
- ◆ August 29, 2008 - Telemarketing Sales Rule, Final Rule Amendments, 73 Fed. Reg. 51164 (2008) (2008 TSR) (amendments directly address use of pre-recorded messages in telemarketing calls)
- ◆ February 15, 2008 – Do-Not-Call Improvement Act (numbers registered on the DNC list to remain permanently)
- ◆ January 4, 2008 – FCC Declaratory Ruling, 23 F.C.C.R. 559, (Debtor-Creditor Ruling).

# More on TCPA Timeline

- ◆ April 5, 2006 – Junk Fax Prevention Act
- ◆ October 1, 2003 – Do not call registry
- ◆ July 3, 2003 – FCC Report and Order - reversed prior conclusion that an established business relationship provides companies with necessary express permission to send faxes, and new rules for predictive dialers.
- ◆ March 31, 2003 – Telemarketing Sales Rule Amendment
- ◆ December 31, 1995 – Telemarketing Sales Rule passed
- ◆ August 7, 1995 – FCC Report and Order - Fax and Phone Solicitation Ruling
- ◆ December 20, 1992 – TCPA goes into effect
- ◆ December 20, 1991 – TCPA passed

# There is some hope for the Financial Services Industry...

- ◆ **Congress Proposed Exemptions for federally-backed loans (e.g., student loans).**
- ◆ **Congress passed the exemption (as a budget rider) on October 30, 2015 – not law as of yet, but very likely to be signed by Pres. Obama.**
- ◆ **New Budget Deal Proposes Amendment to TCPA to Allow Certain Student Loan Collectors to Call Cellphones Using Auto-dialer Without Restriction**

# What the proposed amendment states...

♦ 47 U.S.C. § 227(b)(1)(A)(iii) currently reads:

**It shall be unlawful for any person within the United States– (A) to make any call (other than a call made for emergency purposes or made with the prior express consent of the called party) using any automatic telephone dialing system or an artificial or prerecorded voice– ...(iii) to any telephone number assigned to a paging service, cellular telephone service, specialized mobile radio service, or other radio common carrier service, or any service for which the called party is “charged for the call”**

**Proposed Amendment adds, after *charged for the call*...**

**“...unless such call is made solely to collect a debt owed to or guaranteed by the United States...”**

# continued...

- ◆ Remember, not all student loan debt is “owed to or guaranteed by the United States.” As of 2013, privately held student loan debt estimated at \$165 billion dollars.  
<http://www.consumerfinance.gov/newsroom/student-debt-swells-federal-loans-now-top-a-trillion/>.
- ◆ Much of this debt has been securitized and still comprises a significant percentage of student loan collection activity.
- ◆ Need to be able to determine nature of debt. Collectors of private loans are still bound by TCPA

# What can volume callers do to avoid TCPA liability?

- ◆ **Comply with the law ... clearly this will never happen (even though it is not difficult to periodically verify the identity of the caller or re-establish consent).**
- ◆ **Hire actual human beings to manually place calls (preferably those who speak English and comply with Do Not Call requests) ... again, not very likely.**
- ◆ **Petition the FCC ... increasingly less likely.**
- ◆ **Lobby Congress ... more likely.**
- ◆ **Continue to battle it out in Court ... obvious.**
- ◆ **Be sued over and over again for individual lawsuits ... worst option.**
- ◆ **Eliminate liability in a Class Action lawsuit ... more likely.**

Thank you!  
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CBA

CONSUMER  
BANKERS  
ASSOCIATION

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KATE LARSON

AMERICAN BAR ASSOCIATION

CONSUMER FINANCIAL SERVICES COMMITTEE

NOVEMBER 4, 2015

# TELEPHONE CONSUMER PROTECTION ACT

Passed in 1991, the Telephone Consumer Protection Act (TCPA) requires prior express consent from the “called party” before a caller may place an informational call using an automatic telephone dialing system (ATDS).

47 U.S.C. § 227

# 1991: A Walk Down Memory Lane

**WORLD NEWS**      Gulf War began; USSR dissolved



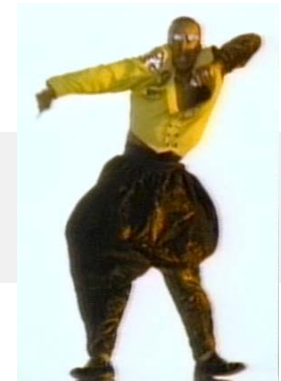
**US NEWS**      Rodney King arrested; Jeffery Dahmer caught

**MOVIES**      The Silence of the Lambs • Hook • The Addams Family •  
Father of the Bride • Beauty and the Beast • Thelma & Louise

**MUSIC**      M.C. Hammer • Nirvana • Whitney Houston •  
Michael Jackson • Cher

**TV SHOWS**      Full House • Fresh Prince of Bel Air •  
Murder She Wrote

**TECHNOLOGY**      Microsoft Releases MS Dos 5.0



# THE NUMBERS: 1991 v. 2015

	1991	2015
World Population	5.39 billion	7.3 billion
Average Super Bowl Advertisement	\$800,000	\$4,500,000
Average Income per year	\$29,430.00	\$46,481.52 (2014)
Dow Jones Industrial Average	Year end close: 3,168	Over 17,000
Google Searches	None – Google founded 7 years later	Over 100 Billion a month

*Clearly times have changed...*

# WIRELESS SHIFT

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90% of American adults have cell phones\*

64% of American adults have a smartphone\*

46.5% of American households are wireless only\*\*

37 million cell phone numbers are reassigned each year\*\*\*

\* Pew Research Center <http://www.pewinternet.org/data-trend/mobile/cell-phone-and-smartphone-ownership-demographics/>

\*\* Pew Research Center <http://www.pewresearch.org/fact-tank/2015/01/07/pew-research-will-call-more-cellphones-in-2015/>

\*\*\* Commissioner Pai Dissenting Statement, Re: In the matter of rules and regulations implementing the TCPA, CG Docket No. 02-278.

# LIABILITY CANNOT BE AVOIDED

## Even with Best Practices...

1. STOP, QUIT revocation texts
2. Customer contact information outreach
3. Frequently scrubbing phone number database
4. Company employee training

## Companies Cannot Call with Certainty

CTIA – The Wireless Association confirms that “there is no reasonable means for companies that make informational and other non-telemarketing calls to wireless numbers for which they have obtained prior express consent, to know if such numbers are actually assigned to someone other than the consenting party or if they have been reassigned.”\*

\*Comments of CTIA – The Wireless Association at 4, Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991; Petition for Expedited Declaratory Rulemaking of United Healthcare Services, Inc., CG Docket No. 02-278 (filed Mar. 10, 2014).

# LITIGATION ABUSE

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“Laugh all the Way to the Bank”

# LAWYERS WIN...

From 2010 to 2014:  
TCPA Litigation Increased **560%**

Average Attorney Receives: **\$2.4 million**

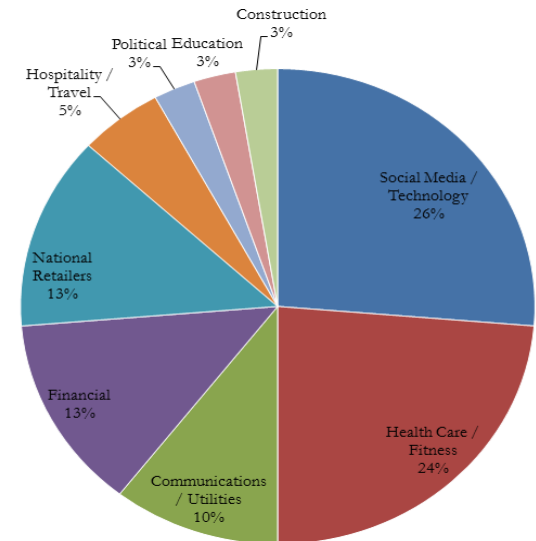
Average Plaintiff Receives: **\$4.12**

“Total Cash for Plaintiffs Attorneys”

- Adonis Hoffman, former Chief of Staff  
Democrat Commissioner Clyburn

## TCPA Class Actions by Industry

A broad spectrum of American businesses, government and nonprofits are burdened by the lack of clarity around TCPA and inconsistent court rulings.



# WHILE CONSUMERS LOSE

## THREATENED COMMUNICATIONS

- ⊕ Account closure and other milestone notices
- ⊕ Low balance notifications
- ⊕ Due date reminders
- ⊕ Food safety notices
- ⊕ Class registration reminders
- ⊕ Student loan repayment reminders
- ⊕ Consumer report surveys
- ⊕ Home preservation assistance programs
- ⊕ FEMA disaster related financial relief and service options
- ⊕ Fee avoidance notices (overdraft fee, late fee, over-limit fee)

# CBA PETITION

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# CBA PETITION FOR DECLARATORY RULING

- ⊕ September 19, 2014: Filed with the FCC
- ⊕ Asked the FCC to clarify “called party” means “intended recipient” for informational, non-telemarketing calls
- ⊕ Received broad support
  - ⊕ U.S. Chamber of Commerce
  - ⊕ American Bankers Association
  - ⊕ American Financial Services of America
  - ⊕ Noble Systems
  - ⊕ Coalition of Higher Education Assistance Organizations
  - ⊕ the National Rural Electric Cooperation Association
  - ⊕ Twitter
  - ⊕ Santander
  - ⊕ Wells Fargo
  - ⊕ Computer and Communications Industry Associations
  - ⊕ Stage Stores
  - ⊕ Genesys Telecommunications
  - ⊕ ACA International

# FCC TCPA ORDER

- ⊕ Adopted June 18, 2015; Published July 10, 2015
- ⊕ Resolved 21 petitions, including CBA's petition
- ⊕ Order overview
  - ⊕ Definition of an ATDS
    - ⊕ Broadened the definition, theoretically sweeping in smartphones
    - ⊕ Included equipment with future capacity, not only present
  - ⊕ Reassigned Numbers
    - ⊕ Defined “called party” as “current subscriber to or customary user of the number”
    - ⊕ Declined to adopt the “intended recipient” approach advocated by CBA
    - ⊕ Created “one-call” safe harbor rule
  - ⊕ Consent Revocation
    - ⊕ Determined consent can be revoked “at any time and through any reasonable means”
  - ⊕ Applied TCPA to text messages

# CBA LITIGATION

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# LITIGATION MILESTONES

- ⊕ **July 13, 2015:** First Petition for Review filed in D.C. Circuit Court of Appeals (ACA International)
- ⊕ **September 1, 2015:** CBA filed Petition for Review
- ⊕ **October 5, 2015:** CBA filed Statement of the Issues
- ⊕ **October 13, 2015:** Court approved Joint Unopposed Briefing Schedule

# TEN PETITIONERS

- ⊕ ACA International
- ⊕ Consumer Bankers Association
- ⊕ National Association of Federal Credit Unions (NAFCU)  
(intervenor)
- ⊕ Portfolio Recovery Associates, LLC
- ⊕ Professional Association of Customer Engagement (PACE), Inc.
- ⊕ Rite Aid Headquarters, Corp.
- ⊕ Salesforce.com and ExactTarget, Inc.
- ⊕ Sirius XM Radio Inc.
- ⊕ United States Chamber of Commerce
- ⊕ Vibes Media, LLC

# LEGAL ARGUMENTS

## **What are we challenging?**

- ⊕ Definition of an ATDS
- ⊕ Reassigned numbers: “Called party” definition and “one call” rule
- ⊕ Revocation of consent
- ⊕ Text messages

## **Under what grounds?**

- ⊕ Administrative Procedures Act
- ⊕ TCPA
- ⊕ U.S. Constitution, First and Fifth Amendments

## **What are we requesting?**

- ⊕ Conclude provisions are arbitrary, capricious, or otherwise unlawful
- ⊕ Vacate and remand with instructions

# LITIGATION TIMELINE

- ⊕ **November 25, 2015:** Petitioners' Brief
- ⊕ **December 2, 2015:** Intervenor Support of Petitioners
- ⊕ **January 15, 2016:** Respondents' Brief
- ⊕ **January 22, 2016:** Intervenor Support of Respondents
- ⊕ **February 16, 2016:** Petitioners' Reply Brief
- ⊕ **February 16, 2016:** Intervenor for Petitioner Reply Brief
- ⊕ **February 24, 2016:** Final Form Briefs for All Parties
- ⊕ **Spring 2016:** Oral Argument (expected)

# DEPARTMENT OF EDUCATION

## **Strengthening the Student Loan System to Better Protect All Borrowers, October 2015**

### **Allow Servicers to Contact Federal Student Loan Borrowers via their Cell Phones**

*If servicers are able to contact a borrower, they have a much better chance at helping that borrower resolve a delinquency or default...With phone numbers changing or being reassigned on a regular basis, it is virtually impossible for servicers to use auto-dialing technology...*

*Congress should change the law to ensure that servicers can contact borrowers using modern technology and help them get into the right repayment plan and avoid the consequences of default or resolve their default.*

# BUDGET DEAL

## **Sec. 301. Debt collection improvements.**

*Subsection 301(a) amends the Communications Act of 1934 to authorize the use of automated telephone equipment to call cellular telephones for the purpose of collecting debts owed to or guaranteed by the United States government. This subsection also authorizes the Federal Communications Commission to issue regulations to limit the number and duration of any such calls. Subsection 301(b) requires the FCC to issue regulations to implement this section within 9 months of the date of enactment of the Bipartisan Budget Act of 2015.*

# CONTACT

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Thank You

Questions?

# Save the Date

Join us for our next program on December 9, 2015, when we will current RESPA issues

And join us for a bonus program on December 1, 2015, when we will look at amendments to the Federal Rules of Civil Procedure and their impact on bankruptcy (and civil) litigation